

MEMORANDUM OF LAW

DATE: June 12, 1996

TO: Debra Fischle-Faulk, Deputy Director,
Contract Services Division, Public Works Department

FROM: City Attorney

SUBJECT: Corporate Data Disclosable Under the Public Records Act

QUESTION PRESENTED

What information that is required for Disadvantaged/ Minority/Women Business Enterprise certification is exempt from disclosure under the Public Records Act?

SHORT ANSWER

The City is permitted to exempt from public disclosure the following items requested on the Form CR-0001A:

Item No.	Description
----------	-------------

16	Corporate officers' social security numbers.
----	--

- 18 Board of Directors' social security numbers and home addresses.
- 22 Firm's gross receipts for each of the last three years.
- 23 Loan information, including the loan amount, unpaid balance, and source of the loan.

BACKGROUND

The City currently has a number of Disadvantaged/Minority/ Women Business Enterprise ("DBE/MBE/WBE") programs in effect. Some programs are voluntary, as part of the contracting process with the City, and some are mandated by federal law. To participate in these programs, potential contractors who fit within one of the categories are required to submit applications and other mandatory paperwork. After review by the Equal Opportunity Contracting Program ("EOCP"), and assuming all requirements are met, firms are certified in the appropriate category.

Much of the information required by the City contains personal information. You have asked how much, if any, of this information is exempt from disclosure under the Public Records Act (the "Act").

ANALYSIS

When the Act, California Government Code sections 6250 through 6268, was enacted in 1968, "the Legislature had long been attempting to 'formulate a workable means of minimizing secrecy in government.'" CBS, Inc. v. Block, 42 Cal. 3d 646, 651 (1986) (quoting San Gabriel Tribune v. Superior Court, 143 Cal. App. 3d 762, 772 (1983)). The primary purpose of the Act is to promote maximum disclosure of the conduct of governmental operations. 53 Ops. Cal. Att'y Gen. 136, 143 (1970). Two exceptions to this general policy of disclosure are set forth in the Act.

I. Specific Exemptions

Section 6254 contains an exhaustive list of specific material which is exempt from disclosure. The exemptions are permissive, not mandatory. The Act endows the agency with discretionary authority to override the statutory exemptions when a dominating public interest favors disclosure. *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 656 (1974); See Cal. Gov't Code Section 6254(a)-(x).

In addition to the express exemptions listed in Section 6254, Section 6255 establishes a catch-all exemption that permits a governmental agency to withhold a record if it can demonstrate that "on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by

disclosure of the record." Cal. Gov't Code Section 6255; *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1344 (1991). Although it is frequently thought that the Act protects the private rights of individuals, the language of the *Times Mirror* case makes clear that competing public interests must be weighed to determine whether to disclose public records.

The following exemptions found in Section 6254 may potentially apply to EOCP certification documents:

- * Subdivision (c) exempts "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;"
- * Subdivision (n) exempts "statements of personal worth or personal financial data required by a licensing agency"
Licensing agency is not defined in the Act. However, the City is the certifying local agency and "local agency" is defined to include a "city, whether general law or chartered; city and county; . . . municipal corporation; . . . political subdivision or any board, commission or agency thereof; or other local public agency." Cal. Gov't Code ' 6252(b).

and

filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for;"

Using these subdivisions as a basic guideline, we analyze the specific questions individually.

A. Social Security Numbers and Addresses

Form CR-0001A requests applicant firms to submit the names, social security numbers, and home addresses of the board of directors as well as the names and social security numbers of the firm's officers. Form CR-0001A, Items 16 and 18. Under subdivision (c), publicly disclosing the social security numbers and home addresses of the firm's directors and officers would constitute an unwarranted invasion of personal privacy. Home addresses and personal social security numbers do not affect how a firm contracts with or works with the City. Thus, it would be proper for you to find that the public interest in non-disclosure, protecting individual rights, outweighs the public interest in disclosure. Cal. Gov't Code Section 6254(c); See *Braun v. City of Taft*, 154 Cal. App. 3d 332 (1984).

At issue in *Braun* was whether the trial court erred in disclosing the first page of a city employee's salary card, which contained

personal information, including the employee's address and social security number. The appellate court stated that the salary card was personal and that the trial court could have ordered the personal items taken out before the salary card was made public. Similarly, the City may redact such personal information from records requested for production under the auspices of the Act.

Additionally, federal law prohibits the disclosure of social security numbers except in very limited circumstances. It provides criminal sanctions for the unauthorized disclosure of social security numbers. See 42 U.S.C. Section 405 and 5 U.S.C. Section 552(a). These specific federal exemptions would weigh heavily in favor of nondisclosure should the balancing test of Section 6254 be invoked.

B. Financial Data

Form CR-0001A requests that applicant firms submit the firm's gross receipts data for each of the last three years. Form CR-0001A, Item 22. The form also requests information regarding all loans taken, including the loan amount, unpaid balance, and source of the loan. Form CR-0001A, Item 23. Under subdivision (n), the firm's gross income and the loan information requested in items 22 and 23 would constitute "financial data . . . filed by an applicant with the licensing agency to establish his personal qualification for the license, certificate, or permit applied for;" Cal. Gov't Code Section 6254(n); See *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762 (1983).

In *San Gabriel*, financial data was supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the company pursuant to an exclusive contract for the collection of waste and garbage. Under subdivision (n), the court ruled the financial information the contractor supplied to the city was not exempt. The court construed the exemption narrowly, and reasoned that the exemption applied only to applicants whose business with the agency was to apply for a license or permit and no public interest could thus be found in the financial data. However, where the firm is actually contracting with the city and receiving city funds, the public interest in the financial data is far greater and compels disclosure.

The purpose of filing Form CR-0001A is to apply for a certification as a DBE/MBE/WBE. No contract exists between the City and the applicant firm. Unlike the case in *San Gabriel*, the financial information submitted to the City does not imply the firm is doing business with the City. Hence, the financial data should be exempt from public disclosure. However, should the firm ultimately become a contractor with the City, the information may be subject to disclosure under the Act.

II. Section 6255 "Catch-all" Exemption

If a record is found to be non-exempt under Section 6254, it may

still be withheld from public disclosure under Section 6255. Section 6255 establishes a catch-all exemption that permits the City to withhold a record if the City can demonstrate that "on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." Times Mirror, 53 Cal. 3d at 1338. Section 6255 places the burden on the City to justify withholding the record. Id.; San Gabriel Tribune, 143 Cal. App. 3d at 780.

The Act does not specifically identify the public interests that might legitimately be "served by not making the record public" under Section 6255. The nature of those interests, however, may be fairly inferred from the specific exemptions contained in Section 6254. As one commentator observed:

¶Section 6255 was designed to act as a catch-all for those individual records similar in nature to the categories of records exempted by section 6254, but which the Legislature determined, in balancing the competing interests, would not justify disclosure as a general rule ¶To the provisions of section 6254 will provide appropriate indicia as to the nature of the public interest in nondisclosure and will thus aid the courts in determining the disclosability of a document under section 6255.

Times Mirror, 53 Cal. 3d at 1338.

Thus, under this section the City may exempt certain information, especially if it is personal or financial, if it determines through the balancing test that the public interest in nondisclosure outweighs the public interest in disclosure.

CONCLUSION

Pursuant to Section 6254 of the Public Records Act, subdivision

(c), the City is permitted to exempt the social security numbers and home addresses of employees of the applicant firm. Under subdivision (n), the City may also exempt financial data, including the firm's gross income and loan information.

Pursuant to Section 6255, the City may also be able to exempt other items on Form CR-0001A if the City can advance a public interest served by nondisclosure which clearly outweighs the public interest served by disclosure. This determination is best made on a case by case basis.

JOHN W. WITT, City Attorney

By
Sharon A. Marshall
Deputy City Attorney

SAM:lc:jrl:mb:911(x043.2)
ML-96-32